

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUN 3 1998

PATRICK FISHER
Clerk

DAVID L. LANIER,

Plaintiff-Appellant,

v.

AMERICAN CONSUMER PRODUCTS,
INC.,

Defendant-Appellee.

No. 98-6030
(D.C. No. 97-CV-1283)
(Western District of Oklahoma)

ORDER AND JUDGMENT*

Before **PORFILIO, KELLY**, and **HENRY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

David L. Lanier appeals from the dismissal without prejudice of his pro se civil rights action for failure to serve the summons and complaint within 120 days as required

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

by Fed. R. Civ. P. 4(m). Our review discloses the district court did no err, and we affirm its judgment.

Mr. Lanier's appeal is grounded upon issues not presented to the district court, namely that "Christmas mail delayed service" and "defendant did not have a local attorney at the time of service." Nevertheless, we believe these contentions fall into the same class as the justifications he did assert. It is plain that service was not accomplished within the time specified in Rule 4(m) and that the district court found no reason for extending the time. We review such holdings for abuse of discretion. *Despain v. Salt Lake Area Metro Gang Unit*, 13 F.3d 1436, 1437 (10th Cir. 1994). The district court did not abuse its discretion in this matter.

AFFIRMED.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge